

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

DR. JOLENE MITCHELL,  Plaintiff,  vs.  SANFORD CLINIC, INC.,  Defendants.	CIV. 19- 4150  <b>COMPLAINT</b>
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The Plaintiff, Dr. Jolene Mitchell ("Dr. Mitchell"), through her undersigned attorneys, states and alleges as follows in support of her Complaint:

**PARTIES**

1. Dr. Mitchell, who is a board-certified occupational and environmental medicine residency-trained physician and also has her masters of occupational health, is now a resident of Overland Park, Kansas.

2. The Defendant, Sanford Clinic, Inc. ("Sanford") is a South Dakota corporation with its principal place of business in Sioux Falls, South Dakota.

**JURISDICTION & VENUE**

3. This action arises under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq. ("Title VII") and Title I of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. As a result, this Court has original jurisdiction pursuant to 28 U.S.C. § 1331.

4. This action also involves claims arising under the South Dakota Human Relations Act, SDCL § 20-13-1 et. seq. and a claim arising under common law. This Court

has jurisdiction over those claims pursuant to 28 U.S.C. 1332(a)(1) as the amount in controversy exceeds \$75,000 exclusive of interest and costs. Even in the absence of diversity jurisdiction, this Court would have supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper pursuant to 28 U.S.C. § 1391 because Sanford's principal place of business is located in and a substantial amount of the events and omissions occurred in the Southern Division of the District of South Dakota.

### **FACTUAL ALLEGATIONS**

6. Sanford Clinic is part of Sanford Health, which has its principal place of business in Sioux Falls, South Dakota. Sanford Health is a large, integrated health system serving multiple states. It claims to have 44 hospitals and 1,400 physicians.

7. Sanford Clinic is a multispecialty outpatient clinic, which includes several occupational health and environmental medicine clinics with locations in North Dakota, Minnesota, and one in Sioux Falls, South Dakota. Hereinafter, the Sioux Falls location will be referred to as "the Clinic" unless otherwise noted.

8. Physicians who are board certified and residency trained in occupational health and environmental medicine are rare. During the relevant time period, Dr. Mitchell was the only board certified, residency trained occupational medicine physician in South Dakota.

9. In 2017, Sanford advertised an Occupational Health Regional Medical Director ("Medical Director") position at the Clinic.

10. The Medical Director position was multifaceted and included the diagnosing, treating, and prevention of occupational illnesses and/or injury, assisting patients in preparing to return to work, and consulting with businesses and/or entities to identify workplace health hazards.

11. The Medical Director's duties involved both functioning as a clinician in treating patients as well as overseeing the clinical care offered by providers in the Clinic.

12. At the time the position was available, Dr. Mitchell had completed her residency and was board certified in occupational health and environmental medicine.

13. Dr. Mitchell had also obtained a Master of Occupational Health degree.

14. Dr. Mitchell had extensive training in workplace safety.

15. Dr. Mitchell applied for a position at Sanford's occupational medicine clinic in Fargo, North Dakota, to work in a clinician-only capacity.

16. During the interview process, however, Sanford asked Dr. Mitchell to take the dual-role Medical Director position at the Clinic in Sioux Falls rather than the clinician position in Fargo.

17. Dr. Mitchell accepted the Medical Director position at the Clinic and moved her family from Wyoming to Sioux Falls to start her job at Sanford in July 2017.

18. The occupational medicine department of Sanford is managed by administration as well as physician leadership.

19. At the time of Dr. Mitchell's hiring, Dr. Joel Blanchard was the physician head of Sanford's occupational health department, including the Clinic in Sioux Falls and those in North Dakota. Dr. Blanchard is a family practice physician.

20. Dr. Blanchard's office was in North Dakota, so although he served as one of Dr. Mitchell's supervisors, they primarily interacted by phone, email, or videoconference.

21. Stephanie Murdock was the Senior Executive Director of Employee Health and Occupational Medicine and served as the administrative head of the occupational health department, with the Sioux Falls and North Dakota clinic directors reporting to her. She also worked primarily in North Dakota.

22. Around the same time Dr. Mitchell was hired, Jack Johnson became the administrative director of the Clinic and was responsible for overseeing the general operations of the Clinic from a non-medical standpoint.

23. At the time of Dr. Mitchell's hiring, both Ms. Murdock and Dr. Blanchard told Dr. Mitchell that there were multiple interpersonal conflicts at the Clinic as well as safety issues that needed to be addressed. They also told her they looked forward to having her expertise in these areas.

24. Health Care is listed as high risk area under the Occupational Safety and Health Care Act of 1970 ("OSHA").

25. The Clinic posed even a higher risk than most health care facilities.

26. The Clinic performs drug screenings, employment screenings, and other services that may determine whether an individual is eligible for a job or whether an individual can maintain his or her job.

27. The Clinic also provides drug screenings and other occupational health services to individuals that are incarcerated, individuals on work release, and individuals on parole and/or probation.

28. Dr. Mitchell noted multiple safety and security concerns almost immediately upon beginning her employment with Sanford.

29. In August of 2017, Dr. Mitchell prepared and submitted a Clinic Needs Assessment to her direct supervisor, Dr. Blanchard.

30. The purpose of the Clinic Needs Assessment was to establish a baseline evaluation of the Clinic, its strengths, and areas for improvement.

31. The vast majority of Clinic staff Dr. Mitchell spoke with raised inadequate security and safety issues as their primary concerns in the workplace.

32. The Clinic Needs Assessment identified multiple security-related issues in the Clinic, including lack of functioning panic buttons or security cameras.

33. Additionally, the staff had not been trained on how to report security incidents. Much later, Dr. Mitchell learned that Sanford had an internal incident reporting system, but the staff was unaware of the system and was untrained on using it.

34. That same month, a threatening patient who claimed he engaged in pedophilia caused the Clinic staff to call the Sioux Falls Police Department repeatedly over the course of two to three days.

35. Dr. Mitchell notified Dr. Blanchard and Mr. Johnson.

36. Dr. Mitchell did not receive any follow up from either Dr. Blanchard or Mr. Johnson.

37. Dr. Mitchell raised several security concerns to Dr. Blanchard and Mr. Johnson over the next several months. She received little or no follow up from either of them.

38. On January 25, 2018, a patient sexually harassed another patient in the waiting room and later sexually harassed a nurse.

39. During his medical examination, that same patient forcefully grabbed Dr. Mitchell by both hands and refused to let her go.

40. Dr. Mitchell was finally able to free herself. However, she suffered a sprained wrist.

41. Between the spring and summer of 2018, there were multiple instances where Clinic staff felt threatened by patients.

42. In the Spring of 2018, Dr. Mitchell was excited to learn that she was pregnant with her second child.

43. After learning of Dr. Mitchell's pregnancy, Dr. Blanchard frequently brought the topic up in his conversations with Dr. Mitchell, asking for status updates and other personal information. Dr. Blanchard also repeatedly inquired about Dr. Mitchell's "emotional health" in conjunction with her pregnancy.

44. On June 18, 2018, Dr. Mitchell was called by Clinic staff to assist with a patient receiving drug testing.

45. The patient was very agitated and punched Dr. Mitchell in the abdomen.

46. Dr. Mitchell suffered vomiting and abdominal cramping as a result of the assault.

47. The incident was traumatic for Dr. Mitchell, particularly in light of her pregnancy.

48. When Mr. Johnson learned of the incident, he responded by stating that “you are too smart to put yourself in that situation.”

49. The patient was subsequently convicted of the assault.

50. On July 21, 2018, a patient presented to the Clinic and exhibited erratic behavior.

51. After leaving the Clinic, he got into his vehicle and attempted to drive over a woman in the parking lot.

52. Mr. Johnson was not there to handle the situation.

53. Despite the numerous safety incidents and complaints over the past year and the Clinic’s high risk patient population, the Clinic had no security personnel, and therefore the Clinic staff turned to Dr. Mitchell for help.

54. Dr. Mitchell attended to the woman in the parking lot and the staff called 911.

55. Mr. Johnson later told Dr. Mitchell that she should not have attended to the woman in the parking lot.

56. On July 24, 2018, Dr. Mitchell sent an email to several Sanford executives, including executives that held positions higher than her direct supervisor, Dr. Blanchard. A copy of the email is attached as **Exhibit A** and incorporated herein.

57. In the email, Dr. Mitchell wrote that she was “begging” for increased security and that she did not “have the ability to keep [her] clinic, staff, providers, and most alarmingly [her] patients safe.”

58. Dr. Mitchell also wrote that she could not ask Clinic staff to perform security tasks for which they were not hired or trained to perform.

59. Three days later, on July 27, 2018, Dr. Mitchell received a letter from an incarcerated patient she had previously treated at the Clinic.

60. The patient, who was a convicted sex offender, indicated that he was “super attracted” to Dr. Mitchell and made comments about her children.

61. When Dr. Mitchell showed the letter to Mr. Johnson, he laughed and told her to throw the letter away.

62. Dr. Mitchell also told her direct supervisor, Dr. Blanchard, about the letter, but she never received any follow-up.

63. On July 30, 2018, a Clinic staff member submitted a written complaint regarding the need for additional security in the Clinic’s drug screening area, highlighting concerns about patients’ ability to simply walk into the drug screening area without having to check in at the front desk and wait for their names to be called.

64. Sanford did not respond to the complaint.

65. The following day, July 31, 2018, Dr. Mitchell was informed that Dr. Blanchard would be driving from Bismarck, North Dakota, to visit the Clinic.

66. Although Dr. Blanchard was her direct supervisor, the only time Dr. Mitchell had previously met with Dr. Blanchard in person at the Clinic was when she underwent orientation. They usually communicated electronically.

67. Dr. Mitchell was not provided an agenda for the meeting, but assumed it would address the security issues she raised in her email to the Sanford executives a week earlier.



68. When Dr. Mitchell presented for the meeting, Dr. Blanchard introduced her to Robin Burnley, a Director with Sanford's Human Resources Department, who was with him.

69. Dr. Blanchard told Dr. Mitchell he was there to discuss her performance.

70. The first issue Dr. Blanchard brought up was an alleged Health Insurance Portability and Accountability Act ("HIPAA") violation where Dr. Mitchell allegedly had discussed a patient's private health history in the reception area of the Clinic.

71. Dr. Mitchell responded that she had previously determined the patient was unfit to operate a commercial vehicle and that the patient had subsequently presented to the Clinic and was very angry.

72. Dr. Mitchell explained that it was the patient who brought up his health history in the reception area while acting in a belligerent manner and brandishing a cane.

73. Dr. Mitchell told Dr. Blanchard that she preferred to keep the reception desk between her and the particular patient and did not feel safe being in a private room with that patient under those circumstances. Dr. Mitchell noted that she previously had raised this exact security concern regarding the handling of patient demands at the front desk.

74. Dr. Blanchard then told Dr. Mitchell he was concerned that she was discriminating against patients with a history of incarceration by conducting internet searches on the patients.

75. Dr. Mitchell responded that the only criminal history search she had done was for the sex offender patient who had sent her the letter a few days prior and that criminal history was a matter of public record.

76. Dr. Mitchell did inform Dr. Blanchard, however, that she was aware that several female Clinic staff had conducted internet searches on patients' criminal histories due to all the incidents of inappropriate behavior by patients in the Clinic who were convicted sex offenders.

77. Dr. Blanchard told Dr. Mitchell that the inmate likely wrote her the letter because she was "a young female" and probably "the only person that had been nice to him."

78. The next issue Dr. Blanchard raised was Dr. Mitchell attending to the woman in the parking lot.

79. Dr. Mitchell responded that she was the only one in the Clinic to deal with that situation as Mr. Johnson usually left around 3:00 or 4:00 in the afternoon and that she was only trying to determine if the woman in the parking lot required medical attention.

80. Dr. Blanchard then brought up a private conversation he and Dr. Mitchell had previously concerning her pregnancy and Dr. Mitchell's fear that the assault Dr. Mitchell suffered by the patient in June 2018 may have adversely affected her pregnancy.

81. Specifically, Dr. Blanchard asked Dr. Mitchell if she needed some time off to deal with "complications" related to her pregnancy.

82. Dr. Mitchell responded in the negative and said she simply wanted effective security in the Clinic.

83. Dr. Blanchard then said it was best if Dr. Mitchell no longer served as Medical Director.

84. Dr. Blanchard and Ms. Burnley also requested that Dr. Mitchell participate in VITAL Worklife's Physician Intervention program by signing a "Consent for Services" form.

85. They asked Dr. Mitchell to sign the consent form immediately and pressured her to sign the form during the meeting.

86. Both represented to Dr. Mitchell that the consent form pertained to participation in confidential coaching/counseling sessions that was part of Sanford's employee assistance program ("EAP").

87. Dr. Mitchell told Dr. Blanchard that she would have to think about it and potentially discuss it with her husband.

88. Dr. Blanchard then offered to discuss the issue directly with Dr. Mitchell's husband.

89. At the end of the meeting, Dr. Blanchard and Ms. Burnley told Dr. Mitchell that she had to immediately announce that that she was stepping down as Medical Director following the meeting. Dr. Blanchard indicated that there were human resources "issues" between Dr. Blanchard and the staff that pre-dated Dr. Mitchell's tenure and that the staff and executive team had a poor relationship, which is why they wanted Dr. Mitchell to make the announcement personally.

90. When Dr. Mitchell asked what reason she should give the staff for her stepping down, Ms. Burnley said "because of the complications with your pregnancy."

91. Mr. Johnson was then called into the meeting and Dr. Blanchard informed him that Dr. Mitchell would no longer be serving as Medical Director and that Dr. Blanchard would take over her Medical Director duties.

92. Stunned and feeling any alternative may irreparably damage her career, Dr. Mitchell knew she had no choice but to announce to the Clinic supervisors and providers that she would no longer be serving as Medical Director.

93. Dr. Mitchell did, however, continue to work in the Clinic and treat patients and did not ask for any special accommodations on account of her pregnancy.

94. Except for necessary doctor's appointments and to seek treatment for the assault in June 2018, Dr. Mitchell had not taken off any time for her pregnancy nor had she asked for any accommodations for her pregnancy.

95. Dr. Mitchell further reviewed the VITAL Worklife Physician Intervention program "Consent for Services" form after the meeting, which is attached and incorporated herein as **Exhibit B**. She discovered that she was being asked to participate in a multi-step, year-long Intervention Program that would involve evaluation of her by licensed mental and behavioral health providers "to better understand the behavior and/or situations that have led to your referral into this program . . . ." The consent form made it clear that the results and information disclosed would not be confidential and could be shared with her employer as well as other entities, such as peer review bodies or state licensing boards.

96. Approximately two weeks after the meeting, Dr. Blanchard completed Dr. Mitchell's performance appraisal.

97. The performance appraisal described Dr. Mitchell as “a role model to other providers as she comes to work and wants to help in any way possible and is not afraid to stay late and see extra patients.” A copy of the performance appraisal is attached and incorporated herein as **Exhibit C**.

98. Dr. Mitchell is described as “show[ing] a genuine interest in the success of her clinic and goes above and beyond to help her clinic achieve success.”

99. One of Dr. Mitchell’s several accomplishments was that “[c]linic staff morale has improved considerably.”

100. Under the “Goals” section, Dr. Blanchard wrote: “I’m not sure what you are uncertain about regarding your employment status. Our goal is to have you overcome recent challenges related to the stresses in your life.”

101. Under the “Next Year’s Goals” section, Dr. Blanchard wrote: “Again, my goal for you is to overcome the recent challenges and resume full duties as director.”

102. On August 23, 2018, Dr. Mitchell performed a grip test on a patient. During the test, the patient placed his hands over Dr. Mitchell’s eyes, nose, and mouth, and subsequently refused to release her fingers until after another provider entered the room. Dr. Mitchell discussed the incident with Dr. Blanchard, who blamed her.

103. On August 24, 2018, Ms. Burnley presented to the Clinic and asked Dr. Mitchell again to sign the “Consent for Services” form for the VITAL Worklife Physician Intervention program.

104. Ms. Burnley asked Dr. Mitchell if she was going to resign. Dr. Mitchell responded in the negative.

105. Dr. Mitchell expressed her concern that the VITAL Worklife Physician Intervention program was really a psychological fitness-for-duty evaluation and expressed her disappointment concerning the allegations made at the July 31, 2018 meeting.

106. Specifically, Dr. Mitchell stated that she did not believe it was a coincidence that the meeting and her demotion occurred within one week of her emailing Sanford executives about the security deficiencies at the Clinic.

107. Ms. Burnley responded that the demotion was for concern with Dr. Mitchell's overall wellbeing and her pregnancy.

108. On August 28, 2018, Ms. Burnley sent an email to Dr. Mitchell offering to set up a meeting between Dr. Mitchell and a representative with VITAL Worklife.

109. On August 31, 2018, Dr. Blanchard emailed Dr. Mitchell and said it was imperative she contact Ms. Burnley about the VITAL Worklife Physician Intervention program.

110. On September 4, 2018, Ms. Burnley presented to the Clinic at 8:00 a.m.

111. Ms. Burnley and Dr. Mitchell had a videoconference with Dr. Blanchard.

112. During the conference, Dr. Blanchard told Dr. Mitchell that the VITAL Worklife Physician Intervention program was to help Dr. Mitchell with the complications of her pregnancy.

113. Dr. Blanchard asked Dr. Mitchell if she was still nauseous.

114. Dr. Blanchard also said that he would be "very disappointed" if Dr. Mitchell did not use the VITAL Worklife Physician Intervention program.

115. Dr. Blanchard and Ms. Burnley both stated that they wanted to meet with Dr. Mitchell's husband directly and have VITAL Worklife meet with her husband. During this meeting, both acknowledged that the VITAL Worklife Physician Intervention Program was not part of Sanford's EAP.

116. On September 4, 2018, Dr. Mitchell attended her last Medical Director meeting and all future meetings were removed from her calendar.

117. That same day, Ms. Burnley sent an email to Dr. Mitchell introducing her to Maureen Dorgan Clemens of VITAL Worklife.

118. On September 7, 2018, Dr. Mitchell's attorney emailed a senior executive in Sanford's legal department, informing him that Dr. Mitchell was being subjected to a hostile work environment based upon the safety issues she raised concerning the Clinic and protected classes including her gender and pregnancy.

119. Dr. Mitchell's counsel also informed the senior executive that Dr. Mitchell was being discriminated against and retaliated against.

120. On September 10, 2018, Dr. Mitchell received another email asking her to set up a call with VITAL Worklife.

121. On September 21, 2018, a Sanford security guard conducted management of aggressive behavior ("MOAB") training at the Clinic.

122. The security guard/MOAB instructor documented the training and specifically noted that the staff were experiencing an escalating level of violence, needed a much safer working environment, did not feel safe, and reported "multiple instances of aggressive

patients and injuries.” The security guard/MOAB instructor’s notes are attached and incorporated herein as **Exhibit D**.

123. Sanford purported to conduct an internal investigation of Dr. Mitchell’s claims. Dr. Mitchell’s attorney expressed skepticism that an internal investigation could be conducted fairly on account of the discriminatory allegations being made against Sanford executives and a human resources director.

124. Sanford concluded that Dr. Mitchell was not demoted, her complaints were unfounded, she was not subject to retaliation, discrimination, or a hostile work environment.

125. Sanford concluded that Dr. Mitchell “has made some decisions that may have exposed her to unnecessary risk.”

126. Sanford asked Dr. Mitchell’s attorney to “remind Dr. Mitchell of the obligation to report promptly all potential workplace injuries.”

127. On December 29, 2018, Dr. Mitchell gave birth to her daughter and went on maternity leave.

128. Dr. Mitchell filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) in January of 2019.

129. While on maternity leave, Dr. Mitchell learned from Clinic staff members that there were rumors she would not be returning to the Clinic.

130. As a condition for Sanford participating in a mediation of Dr. Mitchell’s EEOC claim, Sanford demanded that any potential resolution would result in Dr. Mitchell’s resignation.



131. Sanford suggested that Dr. Mitchell remain on maternity leave while her EEOC Charge of Discrimination was pending because, according to Sanford, Dr. Mitchell would not be able “to return to business as usual.”

132. While on maternity leave, Sanford wrote a letter to Dr. Mitchell informing her that a Supervisor at the Clinic had inappropriately accessed her private medical records on June 20, 2018.

133. Sanford believed “the risk of further access of this information to be low.” A copy of Sanford’s letter is attached and incorporated herein as **Exhibit E**.

134. Despite all of this, Dr. Mitchell returned to work at the Clinic on April 1, 2019.

135. On her first day back, Dr. Mitchell received a letter from Ms. Murdock.

136. The letter claimed that Dr. Mitchell had been “coached” on failing to follow Clinic protocol for disruptive patients and discussing patient information in public spaces with third parties.

137. None of the latter issues or coaching was documented in Dr. Mitchell’s performance appraisal in August of 2018, however.

138. The letter also set forth that Sanford expected Dr. Mitchell’s cooperation and openness to feedback with respect to “performance issues” and that it was not necessary to have legal representation when those issues were addressed. A copy of the letter is attached and incorporated herein as **Exhibit F**.

139. Hopeless and feeling that she was in an intolerable work environment, Dr. Mitchell ultimately resigned on April 14, 2019. A copy of her resignation letter is attached and incorporated herein as **Exhibit G**.

140. Dr. Mitchell received a Notice of Right to Sue from the EEOC on June 6, 2019. A copy of the notice is attached and incorporated herein as **Exhibit H**.

141. In order to find a comparable position to the one she held at the Clinic, Dr. Mitchell and her family had to relocate to Overland Park, Kansas.

142. Her current base compensation, however, is approximately \$120,000 less than what she earned with the Clinic.

**FIRST CAUSE OF ACTION - - SEX (PREGNANCY) DISCRIMINATION IN  
VIOLATION OF TITLE VII**

143. Paragraphs 1 through 142 are incorporated herein as if set forth in full.

144. Title VII prohibits discrimination against any individual with respect to the “terms, conditions, or privileges of employment on the basis of sex.”

145. As amended by the Pregnancy Discrimination Act of 1978, sex-based discrimination under Title VII includes discrimination based upon “pregnancy, childbirth, or related medical conditions.” 42 U.S.C. § 2000(e)(k).

146. The Defendant’s conduct described herein, including its demotion of Dr. Mitchell, violated Title VII and ultimately constituted a constructive discharge.

147. The Defendant’s conduct was malicious and done with reckless disregard for Dr. Mitchell’s rights.

148. As a result of the Defendant's conduct, Dr. Mitchell has suffered and continues to suffer loss of income, mental anguish, embarrassment, and other damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION - - SEX (PREGNANCY) DISCRIMINATION IN VIOLATION OF THE SOUTH DAKOTA HUMAN RELATIONS ACT**

149. Paragraphs 1 through 148 are incorporated herein as if set forth in full.

150. The South Dakota Human Relations Act also prohibits an employer from discriminating against an employee on the basis of sex, including pregnancy.

151. The Defendant's conduct described herein, including its demotion of Dr. Mitchell, violated SDCL § 20-13-10.

152. An objectively reasonable person in Dr. Mitchell's position would have found the conditions of employment intolerable such that the Defendant's conduct constituted a constructive discharge.

153. The Defendant's conduct was malicious and done with reckless disregard for Dr. Mitchell's rights.

154. As a result of the Defendant's conduct, Dr. Mitchell has suffered and continues to suffer loss of income, mental anguish, embarrassment, and other damages in an amount to be determined at trial.

**THIRD CAUSE OF ACTION - - SEX DISCRIMINATION IN VIOLATION OF TITLE VII**

155. Paragraphs 1 through 154 are incorporated herein as if set forth in full.

156. As set forth above, Title VII prohibits discrimination against any individual with respect to the "terms, conditions, or privileges of employment on the basis of sex."

157. The Defendant's conduct described herein, including its demotion of Dr. Mitchell, violated Title VII and ultimately resulted in Dr. Mitchell's constructive discharge.

158. The Defendant's conduct was malicious and done with reckless disregard for Dr. Mitchell's rights.

159. As a result of the Defendant's conduct, Dr. Mitchell has suffered and continues to suffer loss of income, mental anguish, embarrassment, and other damages in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION - - SEX DISCRIMINATION IN VIOLATION OF  
THE SOUTH DAKOTA HUMAN RELATIONS ACT**

160. Paragraphs 1 through 159 are incorporated herein as if set forth in full.

161. The South Dakota Human Relations Act prohibits an employer from discriminating against an employee on the basis of sex.

162. The Defendant's conduct described herein, including its demotion of Dr. Mitchell, violated SDCL § 20-13-10.

163. An objectively reasonable person in Dr. Mitchell's position would have found the conditions of employment intolerable such that the Defendant's conduct constitutes a constructive discharge.

164. The Defendant's conduct was malicious and done with reckless disregard for Dr. Mitchell's rights.

165. As a result of the Defendant's conduct, Dr. Mitchell has suffered and continues to suffer loss of income, mental anguish, embarrassment, and other damages in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION - - DISCRIMINATION BASED UPON A  
PERCEIVED DISABILITY IN VIOLATION OF THE AMERICANS WITH  
DISABILITIES ACT**

166. Paragraphs 1 through 165 are incorporated herein as if set forth in full.

167. Title I of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. prohibits employers from discriminating against qualified individuals with disabilities.

168. Title I of the Americans with Disabilities Act further prohibits employers from discriminating against qualified individuals based upon the employer's perception, albeit erroneous, that a qualified employee suffers from a physical or mental impairment. 29 CFR § 1630.2(g), (1).

169. Dr. Mitchell was qualified to perform the essential functions of the Medical Director position.

170. In fact, Dr. Mitchell did not miss any work outside of medical appointments and her maternity leave and never asked for any accommodations.

171. The Defendant, through its employees, falsely believed that Dr. Mitchell suffered from a mental and/or emotional impairment as a result of her pregnancy or otherwise.

172. Dr. Mitchell suffered an adverse employment action due to the Defendant's false perception that she was suffering from a mental/emotional impairment.

173. The Defendant's conduct, including its demotion of Dr. Mitchell, violated the ADA and ultimately resulted in Dr. Mitchell's constructive discharge.

174. The Defendant's conduct was malicious and done with reckless disregard for Dr. Mitchell's rights.

175. As a result of the Defendant's conduct, Dr. Mitchell has suffered mental anguish, embarrassment, and other damages in an amount to be determined at trial.

**SIXTH CAUSE OF ACTION - - DISCRIMINATION BASED UPON A  
PERCEIVED DISABILITY IN VIOLATION OF THE SOUTH DAKOTA  
HUMAN RELATIONS ACT**

176. Paragraphs 1 through 175 are incorporated herein as if set forth in full.

177. The South Dakota Human Relations Act prohibits an employer from discriminating against an employee on the basis of disability, including perceived disability.

178. Dr. Mitchell was qualified to perform the essential functions of the Medical Director position.

179. In fact, Dr. Mitchell did not miss any work outside of medical appointments and her maternity leave and never asked for any accommodations.

180. The Defendant, through its employees, falsely believed that Dr. Mitchell suffered from a mental and/or emotional impairment as a result of her pregnancy or otherwise.

181. Dr. Mitchell suffered an adverse employment action due to the Defendant's false perception that she was suffering from a mental/emotional impairment.

182. The Defendant's conduct, including its demotion of Dr. Mitchell, violated SDCL § 20-13-10.

183. An objectively reasonable person in Dr. Mitchell's position would have found the conditions of employment intolerable such that the Defendant's conduct constitutes a constructive discharge.

184. The Defendant's conduct was malicious and done with reckless disregard for Dr. Mitchell's rights.

185. As a result of the Defendant's conduct, Dr. Mitchell has suffered mental anguish, embarrassment, and other damages in an amount to be determined at trial.

**SEVENTH CAUSE OF ACTION - - CONSTRUCTIVE DISCHARGE IN  
VIOLATION OF PUBLIC POLICY**

186. Paragraphs 1 through 185 are incorporated herein as if set forth in full.

187. South Dakota Law prohibits an employer from constructively discharging an employee where the employer's motivation for the constructive discharge contravenes a clear mandate of public policy. *Anderson v. First Century Federal Credit Union*, 738 N.W.2d 40, 45-46 (S.D. 2007).

188. Public policy is primarily determined by the constitution, statutes, and judicial decisions. *Dahl v. Combined Ins. Co.*, 621 N.W.2d 163, 166 (S.D. 2001).

189. There are a myriad of federal and South Dakota statutes that reflect a public policy in favor of preventing workplace injuries and that prohibit retaliation against those who raise safety complaints.

190. In addition, the South Dakota Supreme Court has held that hospitals have a duty to prevent the foreseeable intentional acts of third parties. *Small v. McKennan Hospital*, 403 N.W.2d 410 (S.D. 1987).

191. As a judicial decision, the *Small* case represents the public policy of South Dakota.

192. Dr. Mitchell attempted on countless occasions to have the Defendant fulfill its duty and adhere to South Dakota's public policy.

193. In addition to the discriminatory motivations outlined above, the Defendant's demotion and constructive discharge of Dr. Mitchell was motivated by Dr. Mitchell's countless pleas that the Defendant fulfill its duty and adhere to South Dakota's public policy.

194. An objectively reasonable person in Dr. Mitchell's position would have found the conditions of employment intolerable such that the Defendant's conduct constitutes a constructive discharge.

195. The Defendant's conduct was malicious and in conscious disregard for the safety of Dr. Mitchell, Clinic staff, and Clinic patients.

196. As a result of the Defendant's conduct, Dr. Mitchell has suffered and continues to suffer loss of income, mental anguish, embarrassment, and other damages in an amount to be determined at trial.

#### **EIGHTH CAUSE OF ACTION - - RETALIATION IN VIOLATION OF TITLE VII**

197. Paragraphs 1 through 196 are incorporated herein as if set forth in full.

198. Title VII prohibits an employer from "discriminat[ing] against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a).

199. The Defendant's conduct described herein, constitutes prohibited retaliation in violation of Title VII and ultimately resulted in Dr. Mitchell's constructive discharge.

200. The Defendant's conduct was malicious and done with reckless disregard for Dr. Mitchell's rights.



201. As a result of the Defendant's conduct, Dr. Mitchell has suffered and continues to suffer loss of income, mental anguish, embarrassment, and other damages in an amount to be determined at trial.

**NINTH CAUSE OF ACTION - - RETALIATION IN VIOLATION OF THE  
SOUTH DAKOTA HUMAN RELATIONS ACT**

202. Paragraphs 1 through 201 are incorporated herein as if set forth in full.

203. Like Title VII, the South Dakota Human Relations Act also prohibits employers from engaging in retaliation against employees for engaging in protected conduct. *See* SDCL §§ 20-23-10 and 20-13-26.

204. The Defendant's conduct described herein, constitutes prohibited retaliation in violation of the South Dakota Human Relations Act and ultimately resulted in Dr. Mitchell's constructive discharge.

205. The Defendant's conduct was malicious and done with reckless disregard for Dr. Mitchell's rights.

206. As a result of the Defendant's conduct, Dr. Mitchell has suffered and continues to suffer loss of income, mental anguish, embarrassment, and other damages in an amount to be determined at trial.

**TENTH CAUSE OF ACTION - - HOSTILE WORK ENVIRONMENT IN  
VIOLATION OF TITLE VII**

207. Paragraphs 1 through 206 are incorporated herein as if set forth in full.

208. Title VII's prohibition on discrimination and retaliation applies to equally conduct that constitutes a hostile work environment.

209. Through the Defendant's conduct described above, Defendant subjected Dr. Mitchell to a hostile work environment, which ultimately resulted in Dr. Mitchell's constructive discharge.

210. The Defendant's conduct was malicious and done with reckless disregard for Dr. Mitchell's rights.

211. As a result of the Defendant's conduct, Dr. Mitchell has suffered and continues to suffer loss of income, mental anguish, embarrassment, and other damages in an amount to be determined at trial.

**ELEVENTH CAUSE OF ACTION - - HOSTILE WORK ENVIRONMENT IN VIOLATION OF THE SOUTH DAKOTA HUMAN RELATIONS ACT**

212. Paragraphs 1 through 211 are incorporated herein as if set forth in full.

213. SDCL §§ 20-23-10 and 20-13-26's prohibition on discrimination and retaliation applies to equally conduct that constitutes a hostile work environment.

214. Through the Defendant's conduct described above, Defendant subjected Dr. Mitchell to a hostile work environment, which ultimately resulted in Dr. Mitchell's constructive discharge.

215. The Defendant's conduct was malicious and done with reckless disregard for Dr. Mitchell's rights.


216. As a result of the Defendant's conduct, Dr. Mitchell has suffered and continues to suffer loss of income, mental anguish, embarrassment, and other damages in an amount to be determined at trial.

WHEREFORE, Plaintiff Jolene Mitchell respectfully requests the following relief:

- (1) For a judgment against the Defendant on every count listed above awarding all compensatory damages allowable by law, including all allowable pre and post-judgment interest;
- (2) For a determination by the Court that irreparable animosity exists between the parties, and equitable awards of back pay and front pay;
- (3) For an award of punitive damages against the Defendant;
- (4) For an award the costs, disbursements, and allowable attorney's fees Plaintiff incurs pursuing this action;
- (5) For such additional relief the Court determines just.

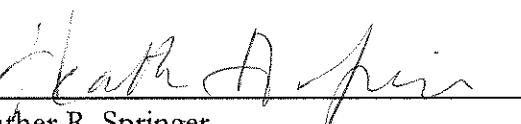
Dated this 28th day of August, 2019

**JOHNSON, JANKLOW,  
ABDALLAH & REITER, L.L.P.**

BY   
Andrew R. Damgaard  
101 South Main Avenue, Suite 100  
Post Office Box 2348  
Sioux Falls, SD 57101-2348  
(605) 338-4304  
Email: [andy@janklowabdallah.com](mailto:andy@janklowabdallah.com)

and

**WOODS, FULLER, SHULTZ & SMITH, PC**

BY   
Heather R. Springer  
Morgan F. Brekke  
300 South Phillips Avenue, Suite 300  
Post Office Box 5027  
Sioux Falls, SD 57117-5027  
(605) 338-4304

*Attorneys for the Plaintiff*

**DEMAND FOR JURY TRIAL**

The Plaintiff respectfully requests a jury trial on all issues triable to a jury.

  
Andrew R. Damgaard

JS 44 (Rev. 02/19)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b> Mitchell, Jolene, Dr.  <b>(b) County of Residence of First Listed Plaintiff</b> <u>Johnson County, KS</u> (EXCEPT IN U.S. PLAINTIFF CASES)  <b>(c) Attorneys (Firm Name, Address, and Telephone Number)</b> <table style="width: 100%;"> <tr> <td style="width: 50%;">           Andy Damgaard            Johnson, Janklow Abdallah, LLP            101 S. Main Ave. #100            Sioux Falls, SD 57104 (605) 338-4304         </td> <td style="width: 50%;">           Heather Springer &amp; Morgan Brekke            Woods, Fuller, Shultz &amp; Smith, P.C.            300 S. Phillips Ave., Ste. 300            Sioux Falls, SD 57104 (605) 336-3890         </td> </tr> </table>	Andy Damgaard Johnson, Janklow Abdallah, LLP 101 S. Main Ave. #100 Sioux Falls, SD 57104 (605) 338-4304	Heather Springer & Morgan Brekke Woods, Fuller, Shultz & Smith, P.C. 300 S. Phillips Ave., Ste. 300 Sioux Falls, SD 57104 (605) 336-3890	<b>DEFENDANTS</b> Sanford Clinic, Inc.  <b>County of Residence of First Listed Defendant</b> (IN U.S. PLAINTIFF CASES ONLY)  <b>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</b>  <b>Attorneys (If Known)</b> Melissa Hinton Evans, Haigh & Hinton, LLP 101 N. Main Ave., Ste. 213 Sioux Falls, SD 57104 (605) 275-9599
Andy Damgaard Johnson, Janklow Abdallah, LLP 101 S. Main Ave. #100 Sioux Falls, SD 57104 (605) 338-4304	Heather Springer & Morgan Brekke Woods, Fuller, Shultz & Smith, P.C. 300 S. Phillips Ave., Ste. 300 Sioux Falls, SD 57104 (605) 336-3890		

<b>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</b>  1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</b> <table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td>1</td> <td>1</td> <td>Incorporated or Principal Place of Business in This State</td> <td>4</td> <td>4</td> </tr> <tr> <td>Citizen of Another State</td> <td>2</td> <td>2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td>5</td> <td>5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>3</td> <td>3</td> <td>Foreign Nation</td> <td>6</td> <td>6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	1	1	Incorporated or Principal Place of Business in This State	4	4	Citizen of Another State	2	2	Incorporated and Principal Place of Business in Another State	5	5	Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6
	PTF	DEF		PTF	DEF																				
Citizen of This State	1	1	Incorporated or Principal Place of Business in This State	4	4																				
Citizen of Another State	2	2	Incorporated and Principal Place of Business in Another State	5	5																				
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)				Click here for: Nature of Suit Code Descriptions.	
<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>PROPERTY RIGHTS</b>	<b>OTHER STATUTES</b>
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	<b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	625 Drug Related Seizure of Property 21 USC 881 690 Other	422 Appeal 28 USC 158 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> 820 Copyrights 830 Patent 835 Patent - Abbreviated New Drug Application 840 Trademark  <b>SOCIAL SECURITY</b> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))	375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>LABOR</b>	<b>FEDERAL TAX SUITS</b>	
210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education	Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty Other: 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement	710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> 462 Naturalization Application 465 Other Immigration Actions	870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 2000e et seq.; 42 USC 12101 et seq.  Brief description of cause: Sex & pregnancy discrimination, retaliation, and hostile work environment resulting in constructive discharge; perceived disability discrimination and constructive discharge
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VII. REQUESTED IN COMPLAINT:	CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. <input type="checkbox"/>	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="radio"/> Yes <input type="radio"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions):	JUDGE	DOCKET NUMBER
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DATE	SIGNATURE OF ATTORNEY OF RECORD
8/28/2019	<i>[Signature]</i>

FOR OFFICE USE ONLY	RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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**Mitchell, Jolene**

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**From:** Murdock, Stephanie  
**Sent:** Wednesday, July 25, 2018 12:59 PM  
**To:** Wilde, Mike (MD); Mitchell, Jolene  
**Cc:** Blanchard, Joel; Rode, Jessica; Van Balen, Clayton; Hocks, Matthew; Suttle, Allison (MD); Grennan, Jennifer (Corporate Legal); Denevan, Kris  
**Subject:** RE: Clinic Security

Thank you Mike and Jolene – we will continue to work as we have been with security and continue our plans for additional staff training. We will connect the dots to see what additional interventions may need to be addressed

Thank you

Stephanie Murdock, MBA, MSN, COHM  
Senior Executive Director OccMed & Employee Health  
2603 E Broadway Ave  
Bismarck, ND 58501  
701-323-5733  
sanfordocmed.com



*Advancing the health of business*

---

**From:** Wilde, Mike (MD)  
**Sent:** Tuesday, July 24, 2018 7:00 PM  
**To:** Mitchell, Jolene <Jolene.Mitchell@SanfordHealth.org>  
**Cc:** Blanchard, Joel <Joel.Blanchard@SanfordHealth.org>; Rode, Jessica <Jessica.Rode@SanfordHealth.org>; Murdock, Stephanie <Stephanie.Murdock@SanfordHealth.org>; Van Balen, Clayton <Clayton.VanBalen@SanfordHealth.org>; Hocks, Matthew <Matthew.Hocks@SanfordHealth.org>; Suttle, Allison (MD) <Allison.Suttle@SanfordHealth.org>; Grennan, Jennifer (Corporate Legal) <Jennifer.Grennan@SanfordHealth.org>; Denevan, Kris <Kris.Denevan@sanfordhealth.org>  
**Subject:** Re: Clinic Security

Jolene,  
I am unsure if others have responded. I added our executive director of security. Am unsure if you have met her and perhaps there can be further review with Kris

Mike

On Jul 24, 2018, at 10:26 AM, Mitchell, Jolene <Jolene.Mitchell@SanfordHealth.org> wrote:

I am writing to request aid in increasing security of my clinic. I realize that our specialty in the execution of legal examinations and decisions daily that result in a complete loss of income is unique. Also, with expansion of law for drug testing protocols for regulated entities we are seeing an increase, as predicted, in positive drug tests. Subjectively we are seeing an increase in tampered/adulterated/defrauded drug tests. Furthermore, as we regularly perform exams on incarcerated persons on work release, have a working population with high penetrance of criminal

convictions, and perform exams on individuals recently released from Federal and State incarceration with violent criminal histories I am begging for increased security.

I have been working with my Clinic Director for a year for increased security. Though some efforts have been made to somewhat improve security the events are becoming more dangerous and there is not appropriate coordination with local police. I have met with Sanford Security, the Director of Security, as well as the individuals whom manage our alarm program. However, in follow up meetings there is no recollection of previous conversations or content.

I do not have the ability to keep my clinic, staff, providers, and most alarmingly my patients safe. I am often the only leader in my clinic after 16:00 so if there are issues I am the one whom responds and at this junction I cannot ask my staff to perform security activities for which they are inappropriately trained and were not hired for.

As a physician specialized in work place safety having to explain to my providers/staff and to my patients why I have police in my parking lot, & why they have to be escorted out of clinic is unconscionable.

I understand that security is not perfect and is costly but I am at a loss for maintaining the safety of my patients, providers, and staff. Please any assistance would be greatly appreciated.

Sincerely,

Dr. Jolene Mitchell, D.O., M.O.H., A.B.J.M.E., C.D.M.E., M.R.O.  
Medical Director for Occupational and Environmental Medicine  
900 E. 54<sup>th</sup> Street North  
Sioux Falls, SD 57104  
Office: 605-328-9329  
Fax: 605-328-9301  
[jolene.mitchell@sanfordhealth.org](mailto:jolene.mitchell@sanfordhealth.org)



## **Intervention Program Description**

The Physician Intervention program is a resource for you to maintain optimal productivity and patient care, peer relationships, and communication with other professionals in the workplace. Our services are delivered in a coordinated and integrated manner with our multi-disciplinary intervention team of consulting physicians and licensed behavioral health specialists.

We will work together with you to better understand the behaviors and/or situations that have led to your referral into this program, and to develop an action plan for optimal functioning at work. The first step of our program was for one of our clinical leads (serving in a case management capacity) to conduct an intake interview with the referring party or parties from your organization. During this interview we gathered background information on the specific concerns that have led to your referral.

Your first meeting will be with one of our senior consultants (a licensed behavioral health counselor). This consultant will answer any questions you have about our program, and will inquire into your understanding of workplace expectations for change and any goals you have for working within our program.

Along with learning about your workplace challenges, your consultant will want to learn more about you as a person, and your life outside of work. We recognize that these factors can have as great an impact on you at work as professional stresses. Your consultant will want to talk with you about your lifestyle, relationships with family and friends, emotional health and wellbeing, stress management strategies, and your anger management skills.

Your next meeting will be with one of our program physicians. This meeting will focus primarily on you and your work life. The physician will want to talk with you about your work style and the way you manage your practice, organization culture, your relationships with peers and other staff, your work/life balance, and organization policies and procedures that may be creating stress for you.

At the completion of these initial meetings, your assigned senior consultant, consulting physician and clinical lead will work together to develop recommendations for meeting the goals expressed by you and your organization. These recommendations are likely to include action items for you and your organization. The clinical lead will share these recommendations with you and your organization, and will follow up for up to one year to provide support and consultation related to recommendations and desired outcomes.





5000 W 36<sup>th</sup> St, Suite 230  
Minneapolis, MN 55416  
877.731.3949  
[www.VITALWorkLife.com](http://www.VITALWorkLife.com)

**CONSENT FOR SERVICES**

I, \_\_\_\_\_, agree to receive workplace consulting services ("Services") from VITAL WorkLife, Inc. and one or more of its Senior Consultants (who are licensed mental health and behavioral specialists) and Consulting Physicians, and other licensed mental and behavioral health providers.

**Nature of Services**

In connection with the Services, I agree and acknowledge that:

- VITAL WorkLife and its staff and Consulting Physicians will not formally diagnose or treat me/the physician being referred;
- VITAL WorkLife's Consulting Physicians will not prescribe medications for or provide me/the physician being referred with formal medical advice or services;
- I am not forming a doctor/patient relationship with VITAL WorkLife or its Consulting Physicians;
- VITAL WorkLife's Consulting Physicians are not providing services to me as licensed medical professionals; and
- VITAL WorkLife may refer me to licensed healthcare professionals if clinically appropriate.

**Confidentiality**

While VITAL WorkLife and its staff, contracted Senior Consultants, contracted Consulting Physicians and other licensed providers will treat information received from me in connection with providing the Services confidential in accordance with applicable state and federal statutes; I understand that information may be disclosed and/or exchanged: (i) between VITAL WorkLife and my employer/contractor; (ii) between VITAL WorkLife and their contracted consultants; (iii) to peer review board if applicable; (iv) if threats of harm are made against another party or myself; (v) if minors or vulnerable adults may be harmed or neglected; (vi) in response to a court ordered subpoena; (vii) to applicable state and professional regulatory agencies, including licensing boards as required related to patient safety; (viii) and as may be required or permitted by state or federal law.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State & Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ Work: \_\_\_\_\_

Home: \_\_\_\_\_ Pager: \_\_\_\_\_

E-mail: \_\_\_\_\_

VITAL WorkLife, Inc.

*Pathways to Well Being*

**EXHIBIT B**

## 2018 PERFORMANCE APPRAISAL

Employee Name: Dr. Jolene Mitchell  
Employee ID: 703402371  
Job Title: Medical Director  
Job Code:

Manager: Dr. Joel Blanchard  
Cost Center/AU:  
Department: OccMed  
Market: Sioux Falls

1. Meets all core competencies of the job: Choose one:  
*If answer is 'No', please provide additional information regarding your answer above:*  
Comments: YES
  
2. Behavioral Competencies:  
*(For all Behavioral Competencies, please place a rating based on the following: Exceeds Expectations - 3, Meets Expectations - 2, Below Expectations - 1 within the 'Rating' field for each competency)*
  - Reliability/Dependability: Consistently achieves both individual and team objectives consistently and on time.  
Rating: 2  
Comments: Jolene is a role model to other providers as she comes to work and wants to help in any way possible and is not afraid to stay late and see extra patients. She has gained the trust of her co-providers.
  
  - Teamwork: Works well and partners with others to achieve organizational and team goals and objectives.  
Rating: 2.5  
Comments: Jolene is a hard worker and is always ready to volunteer to help with projects. She shows a genuine interest in the success of her clinic and goes above and beyond to help her clinic achieve success.
  
  - Communicates Effectively: Match communication style to message and audience, making sure to listen as well as speak.  
Rating: 2  
Comments: Jolene certainly listens to her co-workers and tries to communicate to them. Her knowledge is extensive and at times surpasses her audiences level of understanding. However she tries to explain and answer questions until she feels understood. Recent difficulty with attending planned meetings and huddles have surfaced.

Behavioral Competencies Overall Rating: 2.17
  
3. Accomplishments:
  1. NIOSH publication and award is a great accomplishment
  2. Clinic staff morale has improved considerably
  3. Provider rapport with medical director and OccMed system wide has improved
  4. Community regard for our OccMed clinic has improved
  5. Clinic financials have exceeded budget
  6. Major contributor to the improved relationship with orthopedics and other Sanford consultants
  7. Presentations to the community and at SD Workers Compensation Summit
  
4. Opportunities: *(Employee's leading opportunities for improvement for next year)*
  1. Develop communication style at level of company representative and clinic staff
  2. Communicate when not able to attend scheduled meetings and huddles
  3. Learn boundaries of OccMed practice and boundaries of responsibilities at the clinic
  4. Overcome the challenges of transitioning from academia to a general occupational medicine practice
  5. Return to full role as medical director in 2019

2018 PERFORMANCE APPRAISAL

5. Goals:

a. Update on Current Goals:

I'm not sure what you are uncertain about regarding your employment status. Our goal is to have you overcome recent challenges related to the stresses in your life.

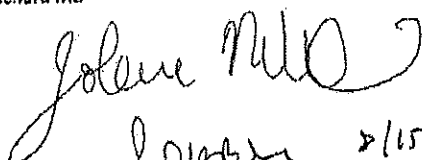
b. Next Year's Goals:

Again, my goal for you is to overcome the recent challenges and resume full duties as medical director.

6. Comments on Overall Performance:

Jolene, you have faced a challenging transition to your current role as medical director. You are a new provider recently out of residency and as such not experienced in your leadership role. You have a lot to learn and we are willing to help you with this. You take on the whole world and feel responsible for everything and everyone- this is a boundary issue which you must overcome to be successful. You are very knowledgeable and a hard worker. These are two very strong qualities that you possess. These will serve you well as you gain experience. I look forward to your return to full duties as medical director. It's my pleasure to have worked with you. Thank you for being part of our team!

Joel Blanchard MD

  
Jolene 8/15/18

**Safety Training**

**MOAB – Management of Aggressive behavior**

I presented MOAB, SAFETY and SECURITY training to OCC Med staff at the Stevens center. OCC med staff was experiencing an escalating level of violence and needed a much safer working environment.

Staff stated they did not feel safe working with unpredictable unruly aggressive patients. Staff reported multiple instances of aggressive patients and injuries.

Materials presented covered Safety/ Awareness, Security/ Safer facility, and MOAB materials covering deescalation techniques, with some self defense techniques.

I presented two 4 hour sessions.

Calvin Hilllgas

Sanford Security / MOAB Instructor



1305 W 18th Street  
PO Box 57117  
Sioux Falls, SD 57117-0017

Ph: (605) 333-1000  
sanfordhealth.org

**SANFORD**  
HEALTH

March 22, 2019

Jolene Mitchell  
7004 E 38<sup>th</sup> St  
Sioux Falls SD, 57110

Dear Ms. Mitchell:

This letter is in response to your reported concern that your protected health information at Sanford Health may have been inappropriately accessed by employees of the Sanford Occupational Medicine Clinic, or Sanford Employee Health department. As per our phone conversation on March 22, 2019, I can confirm that we have identified inappropriate access to your electronic medical record. The access occurred on June 20, 2018 and we became aware of it on March 19, 2019.

Our investigation indicates that a Sanford Health Clinical Supervisor employed by the Occupational Medicine Clinic accessed your electronic medical record without a work-related purpose and therefore is deemed inappropriate. Specifically, the employee accessed your demographic information and your appointment schedule without a need to know that information.

In response to this incident we have followed our policy relating to privacy and security violations and have taken action as prescribed in that policy. At this time, we consider the risk of further access of this information to be low.

We sincerely apologize for any distress this incident has caused you. We take our role of safeguarding your personal information and privacy very seriously and sincerely apologize for this incident. All Sanford employees do receive annual training about HIPAA and patient confidentiality. Should you have any questions or further concerns, please contact me toll-free at 1-800-325-9402 or directly at 605-328-6651.

Sincerely,



Becky Ball, MBA, BSN, RN  
Lead Privacy Officer  
Sanford Health





April 1, 2019

Dear Dr. Mitchell,

Before your leave, you were informed that Sanford investigated your claims that you were demoted, subjected to a hostile work environment, and retaliated against for reporting your safety concerns. Although the investigation did not substantiate these claims, Sanford recognized there was room to improve the working relationships and communications between Dr. Blanchard, Mr. Johnson, and yourself and offered the assistance of Renee Schultz for that purpose.

Given the previous misunderstandings, I wanted to memorialize the following to ensure a safe and effective work environment going forward:

1. You remain the Medical Director at the Sioux Falls Occupational Health clinic. As previously communicated to you, Sanford has confirmed through multiple channels that you were never demoted.
2. Dr. Blanchard and Mr. Johnson have both met with Ms. Schultz and Ms. Schultz has attempted to reach out to you several times. You are not required to meet with Ms. Schultz, but this resource remains available to you.
3. Over the past year, you have been coached regarding (1) failing to follow clinic protocol for disruptive patients; (2) discussing patient information in public spaces and with third parties; and (3) failing to attend clinic meetings and huddles without advance notice. Sanford expects that you will address these concerns and comply with all applicable Sanford policies. Dr. Blanchard, Mr. Johnson, or the appropriate Sanford representative will address any performance issues with you and will expect your cooperation and openness to feedback. It is not appropriate to have legal representation when such issues are addressed with you.
4. You are required to maintain professional and cooperative working relationships. This includes accepting constructive suggestions and comments from co-workers, communicating timely with co-workers, and treating co-workers professionally and respectfully. Dr. Blanchard and Mr. Johnson have also been reminded of this requirement.
5. If you feel harassed, discriminated, or retaliated against, or have new information relevant to your previous concerns, you should report the concerns or new information to Patsy Kramer by calling or emailing Ms. Kramer or, as provided by Sanford's discrimination policy, contacting your direct supervisor, Sanford management (e.g., contacting me directly), or another Human Resources representative.

If you have any questions regarding the foregoing, do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "Stephanie Murdock".

Stephanie Murdock

Senior Executive Director – Employee Health and Occupational Medicine

**EXHIBIT F**

April 14, 2019

Sanford Health  
Attn: Stephanie Murdock

[Stephanie.Murdock@SanfordHealth.org](mailto:Stephanie.Murdock@SanfordHealth.org)

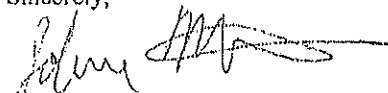
Re: Resignation of Employment

Dear Stephanie,

Regretfully, I am writing to submit my involuntary resignation as the Medical Director of the Sanford Health Occupational Medicine Clinic. Although I had hoped to have a long and prosperous career with Sanford, my previously-raised concerns remain unresolved and the retaliation, discrimination, and hostility I have been subjected to have only escalated since my return from maternity leave. As a result, it has become impossible for me to continue working in that environment.

Due to the unbearable nature of the workplace, I intend for my resignation to be effective immediately. However, if a transition period is needed for patient safety or continuity purposes, I am available to work this week, but will do so only if Sanford can ensure my safety and well-being in the clinic during such transition.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jolene Mitchell', with a long horizontal flourish extending to the right.

Dr. Jolene Mitchell, D.O., M.O.H., ABIME, MRO, CME

EEOC Form 161-B (11/16)

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)**

To: **Jolene Mitchell**  
**7004 East 38th Street**  
**Sioux Falls, SD 57104**

From: **Minneapolis Area Office**  
**Equal Employment Opportunity Commission**  
**330 S 2nd Avenue, Suite 720**  
**Minneapolis, MN 55401**



On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(a))**

EEOC Charge No.

EEOC Representative

Telephone No.

**444-2019-00677**

**Karen S. Seymour,**  
**Office Automation Asst**

**(612) 335-4050**

*(See also the additional information enclosed with this form.)*

**NOTICE TO THE PERSON AGGRIEVED:**

**Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA):** This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

**Age Discrimination in Employment Act (ADEA):** You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:



The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.


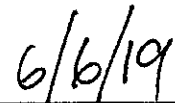


The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

**Equal Pay Act (EPA):** You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosures(s)

**Julianne Bowman,**  
**District Director**

(Date Mailed)

CC:

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